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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the Commission's Procurement Incentive Framework and to Examine the Integration of Greenhouse Gas Emissions Standards into Procurement Policies.

Rulemaking 06-04-009
(Filed April 13, 2006)

**ASSIGNED COMMISSIONER'S RULING: PHASE 1 SCOPING MEMO
AND NOTICE OF WORKSHOP ON INTERIM GREENHOUSE GAS
EMISSIONS PERFORMANCE STANDARD**

1. Introduction and Overview

The Order Instituting Rulemaking (OIR) sets forth a preliminary scoping memo for this proceeding, finding that this rulemaking should serve as the forum for implementing the Procurement Incentive Framework adopted in Decision (D.) 06-02-032 for considering the adoption and implementation of a greenhouse gas (GHG) emissions performance standard, per the Commission's October 6, 2005 GHG Policy Statement. After considering the prehearing conference (PHC) statements and the discussion at the PHC, I elect to proceed with a two-phased approach for this proceeding.

As described more fully below, Phase 1 will focus on the policy, design and implementation issues associated with an interim GHG emissions performance standard intended to serve as a near-term bridge to the load-based GHG cap adopted by the Commission in D.06-02-032. In Phase 2, the Commission will address the implementation issues associated with the load-based GHG emissions cap adopted in D.06-02-032 and related procurement incentive framework implementation issues.

In Phase 2 the Commission will also consider whether a GHG emissions performance standard should be adopted as a permanent complement to that cap, and if so, the design of such a standard. Today's ruling will focus on the scope and schedule for Phase 1. By subsequent ruling, I will address the scope and schedule for Phase 2. A further PHC may be scheduled for that purpose in July or August.

As required by Rules 6(c)(2) and 6.3 of the Commission's Rules of Practice and Procedure, this ruling affirms the proceeding category, addresses the projected resolution date for the Phase 1 issues in this proceeding and the need for evidentiary hearings.¹

This ruling also serves as notice that a three-day workshop on Phase 1 issues will be held June 21-23, 2006. The first day will begin at 10:00 am, and the remaining days will begin at 9:00 am. The sessions are scheduled to end at 5:00 pm on all three days. The workshop will be held at the Hiram Johnson State Building-San Diego Room, 455 Golden Gate Avenue, San Francisco. It will be facilitated by Division of Strategic Planning (DSP) staff or their consultants.

The due dates for pre-workshop comments and legal briefs on Phase 1 issues are set forth in Section 3 below.

2. Scope of Phase 1: Interim GHG Emissions Performance Standard For Electric Procurement

In the October 6, 2005 GHG Policy Statement, the Commission describes a GHG emissions performance standard that would limit the GHG emissions levels for all new utility-owned and all procurement contracts that exceed three years in length to "no higher than the GHG emissions levels of a combined-cycle natural gas turbine." (See Attachment 1.) In Phase 1, the Commission will focus

¹ All references herein to "Rules" refer to the Commission's Rules of Practice and Procedure, which can be viewed at www.cpuc.ca.gov.

on the policy, design and implementation issues associated with an interim GHG emissions performance standard intended to serve as a near-term bridge to the load-based GHG cap adopted by the Commission in D.06-02-032. More specifically, Phase 1 will address the following questions:

- (a) Should the Commission adopt an interim GHG emissions performance standard to guide ongoing electric procurement decisions while it takes the necessary steps to fully implement D.06-02-032?
- (b) If the Commission elects to adopt such a standard, how should it be designed and implemented so that it can be put in place quickly to serve this purpose?

In addressing question (a) above, respondents and interested parties should present their best assessment at this time of the costs, benefits and co-benefits (e.g., job creation, economic impacts) associated with the establishment of an interim GHG emissions performance standard. In addressing question (b), all parties should keep very clearly in mind the focus of this phase on an interim or “bridge” performance standard that can be put in place quickly. As discussed at the PHC, the utilities and interested parties are expected to ensure that their technical and policy experts on these issues attend the Phase 1 workshop, so that there can be a productive dialog on these matters.²

Some parties have asked for clarification on whether the design of a performance standard could deviate from the description presented in the October 6, 2005 GHG Policy Statement. The parties’ suggested refinements/modifications to consider in Phase 1 include: modifying the contract length to which the standard would apply (e.g., “short term” contracts; contracts over 5 years); limiting the standard to contracts larger than some minimum threshold or to baseload contracts; including utility retained

² May 10, 2006 PHC Reporter’s Transcript (RT) at 20-21, 31-34, 42-43, 44-45.

generation under the standard, calculating compliance with the standard on a portfolio basis, rather than on a unit- or contract-specific basis; allowing offsets to meet the standard; using something other than a combined cycle gas turbine as the standard, among others.

The language of the OIR indicates that the Commission did not intend to restrict the design of the performance standard to the one specifically set forth in the 2005 GHG Policy Statement.³ In the context of Phase 1, however, the specific purpose of an interim performance standard may dictate many of the relevant design and implementation parameters. As discussed at the PHC, certain “bells and whistles” (e.g., offsets) to a performance standard that the Commission may wish to consider in the context of a load-based cap do not appear to be feasible in the context of an interim standard that needs to be put in place quickly.⁴

Accordingly, deviations from the performance standard design set forth in the 2005 GHG Policy Statement may be considered in Phase 1, but only to the extent that such deviations would not significantly delay the implementation of an interim performance standard.

As discussed at the PHC, the Commission has not made a final determination regarding the applicability of the interim performance standard to non-investor-owned utility load serving entities (non-IOU LSEs) within its jurisdiction. The utilities and interested parties are directed to brief the Commission regarding jurisdictional and other legal issues that they believe are pertinent to Phase 1. (See Section 3 below.) However, as cautioned by Administrative Law Judge (ALJ) Gottstein, briefs shall be limited to legal issues related to the Phase 1 interim performance standard. Parties should not

³ See, the discussion of issues on pages 9 and 10 of the OIR.

⁴ RT at 44-45.

re-litigate jurisdictional issues with respect to a load-based GHG cap, which have already been briefed and responded to by the Commission in D. 06-02-032.⁵

3. Phase 1 Schedule and Notice of Workshop

As indicated in the Phase 1 schedule below, a three-day workshop on Phase 1 issues will be held June 21-23, 2006. The first day will begin at 10:00 am, and the remaining days will begin at 9:00 am. The sessions are scheduled to end at 5:00 pm on all three days. The workshop will be held at the Hiram Johnson State Building-San Diego Room, 455 Golden Gate Avenue, San Francisco. It will be facilitated by DSP staff or their consultants, and ALJ Gottstein will be in attendance.

At the PHC, Pacific Gas and Electric Company agreed to hold a meeting among interested parties to discuss data/information that would be relevant and feasible to compile for the analysis of Phase 1 issues. This data/information would be made available to interested parties to facilitate the development of pre-workshop 1 comments and the workshop discussion.

DSP staff may provide further guidance to the parties on the specific issues to address in their pre-workshop comments and at the workshop, the format/agenda of the workshop and other matters as required to assist ALJ Gottstein and myself in developing the record on Phase 1 issues.

Phase 1 Schedule

Pre-Workshop Comments on Phase 1 Issues	June 12, 2006
Workshop	June 21-23, 2006
Post-Workshop Comments	<i>To be scheduled at completion of workshop</i>
Opening Briefs on Jurisdictional and other Legal Issues (Phase 1 only)	June 30, 2006
Reply Briefs on Jurisdictional/Legal Issues	July 10, 2006

⁵ RT at 48-49.

Draft Workshop Report/Staff Recommendations	August 21, 2006
Opening Comments on Workshop Report	September 1, 2006
Reply Comments on Workshop Report	September 12, 2006
Final Workshop Report/Staff Recommendations	September 25, 2006
Draft Decision Addressing Final Staff Recommendations and Parties' Positions	November 9, 2006
Comments on Draft Decision	November 29, 2006
Reply Comments on Draft Decision	December 4, 2006
Final Decision (on Agenda)	December 14, 2006

4. Schedule of Proceeding

My goal is to resolve the Phase 1 issues in this proceeding by the end of 2006, or shortly thereafter. As discussed in the OIR and at the PHC, issues related to the implementation of the load based cap adopted in D.06-02-032 and consideration of a GHG performance standard to complement that cap requires the resolution of numerous reporting and monitoring protocols, the evaluation of complex design parameters, and consideration of many other implementation issues. Accordingly, I anticipate that this proceeding will remain open beyond the 18 month period specified in Pub. Util. Code § 1701.5. A final determination on the date by which all issues in this proceeding can be resolved will be made in a subsequent ruling, in which I will address the scope and schedule for Phase 2.

5. Need for Evidentiary Hearings

I concur with ALJ Gottstein's assessment at the PHC that evidentiary hearings are not required to resolve Phase 1 issues.⁶ I will make a determination on the need for evidentiary hearings in Phase 2 in a subsequent ruling.

⁶ RT at 16-17.

6. Category of Proceeding

The OIR issued on April 17, 2006 preliminarily determined that this proceeding should be categorized as “quasi-legislative,” as that term is defined in Rule 5(d). No objections were filed or raised at the PHC. Accordingly, I affirm the preliminary categorization of this proceeding. This ruling, only as to category, is appealable under the procedures in Rule 6.4.

7. Service List and Service Requirements

A new service list was established in accordance with the procedures set forth in the OIR, is posted to the Commission’s website. All comments required by this ruling shall be formally filed at the Commission. All notices, comments and other submittals required by this ruling shall be served on the service list in this proceeding pursuant to the Electronic Service Protocols attached to the OIR and consistent with Rules 2.3 and 2.3.1. Please note that those protocols require that ALJ Gottstein and I are also served hard copies of all submittals.

8. Ex Parte Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in *ex parte* communications and the reporting of such communications. Rule 7(d) applies to proceedings categorized as quasi-legislative. Accordingly, *ex parte* communications are allowed without restriction or reporting requirement in all phases of this rulemaking.

IT IS RULED that:

1. The schedule and scope of Phase 1 is set forth in this ruling.
2. The schedule and scope of Phase 2 will be addressed in a subsequent ruling.
3. For the reasons discussed in this ruling, this proceeding will remain open beyond the 18-month period specified in Pub. Util. Code § 1701.5. A final determination on the date by which all issues in this proceeding can be resolved

will be made by subsequent ruling addressing the scope and schedule for Phase 2.

4. A workshop on Phase 1 issues will be held on June 21-23, 2006 at the Hiram Johnson State Building-San Diego Room, 455 Golden Gate Avenue, San Francisco. The first day will begin at 10:00 am, and the remaining days will begin at 9:00 am. The sessions are scheduled to end at 5:00 pm on all three days.

5. Pre-workshop comments on Phase 1 issues are due by June 12, 2006. The schedule for post-workshop comments will be established at completion of the Phase 1 workshop.

6. As discussed in this ruling, opening briefs on jurisdictional and other legal issues pertaining to Phase 1 matters are due June 30, 2006. Reply briefs are due July 10, 2006.

7. The assigned ALJ may make any revisions to this schedule necessary for the fair and efficient management of the proceeding.

8. As discussed in this ruling, Division of Strategic Planning staff may provide further guidance to the parties on the specific issues to address in their pre-workshop comments and at the workshop, the format/agenda of the workshop and other matters as required to assist in developing the record on Phase 1 issues.

9. Evidentiary hearings are not required to resolve the issues in Phase 1 of this proceeding. A final determination on the need for hearings on Phase 2 issues will be made by subsequent ruling.

10. All notices, comments and other submittals required by this ruling shall be served on the service list in this proceeding pursuant to the Electronic Service Protocols attached to the OIR and consistent with Rules 2.3 and 2.3.1. Hard copies shall also be served on ALJ Gottstein and the Assigned Commissioner, pursuant to those protocols.

11. This proceeding is categorized as quasi-legislative. Accordingly, pursuant to Rule 7(d), ex parte communications are allowed without restriction or reporting requirement in all phases of this rulemaking.

Dated June 1, 2006, at San Francisco, California.

/s/ MICHAEL R. PEEVY

Michael R. Peevey
Assigned Commissioner

ATTACHMENT 1

COMMISSION'S POLICY STATEMENT ON GREENHOUSE GAS PERFORMANCE STANDARDS, OCTOBER 6, 2005

WHEREAS, In June 2005 Governor Schwarzenegger announced his groundbreaking initiative to reduce California's greenhouse gas (GHG) emissions to 1990 levels by 2020; and

WHEREAS, The California Public Utilities Commission (PUC) is actively participating in the Governor's Climate Action Team and is implementing energy policies that are consistent with the GHG goals; and

WHEREAS, Over the past 12 months the State of California has taken significant strides towards implementing an environmentally and economically sound energy policy through Governor Schwarzenegger's GHG reduction targets and the adoption of the Energy Action Plan II (EAP II) by the PUC and the California Energy Commission (CEC). These policies recognize that principal reliance on energy efficiency, conservation measures and renewable resources is the path to a sustainable energy future that ensures adequate and reliable supply at stable prices; and

WHEREAS, The PUC will meet the Governor's GHG goals and implement the policies set forth in EAP II. The PUC has established new, aggressive standards for energy efficiency and is developing a plan to meet the Governor's goal of a 33 percent renewable portfolio standard by 2020; and

WHEREAS, To the extent efficiency, demand response, renewable resources, and distributed generation are unable to satisfy increasing energy and capacity needs, EAP II states that the State will rely on clean and efficient fossil-fired generation. A key action item in EAP II is to "encourage the development of cost-effective, highly-efficient, and environmentally-sound supply resources to provide reliability and consistency with the State's energy priorities." and

WHEREAS, The PUC concluded in its December 2004 decision approving the IOUs' long-term procurement plans (Decision 04-12-048) that future regulation of GHG emissions is probable and directed the Investor Owned Utilities (IOUs) to employ an environmental adder in evaluating procurement bids. A GHG emissions standard will further serve to internalize "the significant and under-recognized cost of GHG emissions" recognized in the PUC's Decision, and to reduce California's exposure to costs associated with future regulation of these emissions; and

WHEREAS, The establishment of a policy such as a GHG emissions standard for all electric procurement is a logical and necessary step to meet EAP II and the Governor's GHG goals. In order to have any meaningful impact on climate change, the Governor's GHG emissions reduction goals must be applied to the State's electricity consumption, not just the State's electricity production; and

WHEREAS, The CEC has requested the PUC's input on a proposed GHG policy for electricity generation contained in the 2005 draft *Integrated Energy Policy Report* (Draft IEPR) that, ". . . any GHG performance standard for utility procurement be set no lower than levels achieved by a new combined-cycle natural gas turbine."; and

WHEREAS, In a letter to the IEPR Committee, CEC Chairman Desmond stated, ". . . California should act to minimize potentially significant reliability and cost risks by avoiding more long-term investments (exceeding 3-5 years in duration) in baseload power plants with emissions per megawatt-hour of greenhouse gases and criteria air pollutants exceeding those of a combined cycle natural gas turbine."; and

WHEREAS, The State's energy agencies must act expeditiously and in concert to send the right investment signals to electricity markets throughout the West. Many of the resources that may generate electricity for consumption in the State are currently in the planning stage. For example, there are approximately 30 proposed coal fired plants across the West, some of which are planned in anticipation of meeting demand in California. The carbon dioxide emissions from just three 500 MW conventional coal-fired power plants would offset all of the emissions reductions from the IOUs' energy efficiency programs and would seriously compromise the State's ability to meet the Governor's GHG goals. As the largest electricity consumer in the region, California has an obligation to provide clear guidance on performance standards for utility procurement; and

WHEREAS, Publicly-owned utilities currently are not required to meet the state's energy efficiency, renewables and environmental standards.

NOW, THEREFORE, BE IT

RESOLVED, The PUC directs the Executive Director to forward this Policy Statement and a report on the deliberations of the PUC on this matter to the CEC;

RESOLVED, The PUC directs Staff and its General Counsel to investigate adoption by the PUC of a greenhouse gas emissions performance standard for

IOU procurement that is no higher than the GHG emissions levels of a combined-cycle natural gas turbine for all procurement contracts that exceed three years in length and for all new IOU owned generation. In the case of coal-fired generation, the capacity to capture and store carbon dioxide safely and inexpensively is necessary to meeting the standard;

RESOLVED, The PUC directs Staff and its General Counsel to promote and advocate for policies at the state and federal levels that encourage the development of environmentally sound resources with an emphasis on reductions in GHG emissions;

RESOLVED, That the PUC authorizes Staff to investigate the integration of a GHG performance standard into the PUC's existing policies regarding GHG emissions including the environmental adder, the procurement incentives framework, as well as the work of the Governor's Climate Action Team and the CEC. A critical step in this process will be to collect specific fuel type information for IOU procurement at a level of detail that will allow the State to ensure that the performance standard is met;

RESOLVED, The PUC directs Staff, working with the CEC, to investigate offset policies that are designed to ensure that the Governor's GHG goals are achieved. In addition, the PUC directs Staff to consider whether an offset policy would eliminate the important benefit of mitigating financial risk to California consumers of future GHG regulation and also significantly dampen the market signal for investment in new and improved technologies for clean generation. Finally, any offset policy must include a reliable and enforceable system of tracking emissions reductions;

RESOLVED, In order to ensure consistency, the PUC calls on the publicly-owned utilities to reduce emissions that contribute to global warming by adopting energy efficiency and renewables goals that are comparable to the standards that the IOUs are required to meet under state law and regulation, as well as adopting an equivalent GHG performance standard.

(END OF ATTACHMENT 1)

INFORMATION REGARDING SERVICE

Electronic mail addresses that I have provided notification of filing to are listed below.

Dan.adler@calcef.org;
Denise_Hill@transalta.com;
JDF1@PGE.COM;
abb@eslawfirm.com;
achang@nrdc.org;
adrian.pye@na.centrica.com;
agrimaldi@mckennalong.com;
ahartmann@lspower.com;
alan.comnes@nrgenergy.com;
amsmith@semptra.com;
andy.vanhorn@vhcenergy.com;
arno@arnoharris.com;
aweller@sel.com;
bcragg@gmssr.com;
bkc7@pge.com;
bmcc@mccarthy law.com;
burtraw@rff.org;
cajollyco@verizon.net;
carter@ieta.org;
case.admin@sce.com;
chris@newsdata.com;
chrism@mid.org;
cjlw5@pge.com;
ckmitchell1@sbcglobal.net;
clark.bernier@rlw.com;
clyde.murley@comcast.net;
cmkehrein@ems-ca.com;
curt.barry@iwpnews.com;
curtis.kebler@gs.com;
david@branchcomb.com;
deb@a-klaw.com;
diane_fellman@fpl.com;
dil@cpuc.ca.gov;
dks@cpuc.ca.gov;
don.stoneberger@apses.com;
douglass@energyattorney.com;
dsh@cpuc.ca.gov;
dwang@nrdc.org;
eguidry@westernresources.org;
ej_wright@oxy.com;
ek@a-klaw.com;
ell5@pge.com;
elvine@lbl.gov;
emahlon@ecoact.org;
epoole@adplaw.com;
etiedemann@kmtg.com;
ewolfe@resero.com;
filings@a-klaw.com;

jlaun@apogee.net;
jleslie@luce.com;
jol@cpuc.ca.gov;
joyw@mid.org;
jscancarelli@flk.com;
jsqueri@gmssr.com;
jwiedman@gmssr.com;
jxa2@pge.com;
karen.mcdonald@powerex.com;
karen@klindh.com;
keith.mccrea@sablauw.com;
kelly.potter@apses.com;
ken.alex@doj.ca.gov;
kevin.boudreaux@calpine.com;
kgriffin@energy.state.ca.us;
kjsimonsen@ems-ca.com;
kmills@cbbf.com;
kowalewskia@calpine.com;
lbbarratt@adelphia.net;
ldecarlo@energy.state.ca.us;
liddell@energyattorney.com;
lisa_weinzimer@platts.com;
llund@commerceenergy.com;
loe@cpuc.ca.gov;
lrm@cpuc.ca.gov;
lwrazen@sempraglobal.com;
marcel@turn.org;
mclaughlin@braunlegal.com;
mdjoseph@adamsbroadwell.com;
meg@cpuc.ca.gov;
mflorio@turn.org;
mmazur@3phases.com;
mpa@a-klaw.com;
mrw@mrwassoc.com;
mts@cpuc.ca.gov;
norman.furuta@navy.mil;
nsuetake@turn.org;
pduvair@energy.state.ca.us;
pseby@mckennalong.com;
pssed@adelphia.net;
rapcowart@aol.com;
rhwisier@lbl.gov;
richards@mid.org;
rick_noger@praxair.com;
rmccann@umich.com;
roger.pelote@williams.com;
rprince@semprautilities.com;
rschmidt@bartlewells.com;

fluchetti@ndep.nv.gov;	samuel.r.sadler@state.or.us;
freedman@turn.org;	sas@a-klaw.com;
george.hanson@ci.corona.ca.us;	sberlin@mccarthyaw.com;
gilliaa@sce.com;	scarter@nrhc.org;
glw@eslawfirm.com;	scott.tomashefsky@ncpa.com;
gmorris@emf.net;	shayleach.labray@pacificorp.com;
greg.blue@sbcglobal.net;	sls@a-klaw.com;
gregory.koiser@constellation.com;	sscb@pge.com;
gsmith@adamsbroadwell.com;	sschleimer@calpine.com;
gxl2@pge.com;	ssmyers@att.net;
harveyederpspc.org@hotmail.com;	steven@iepa.com;
hayley@turn.org;	steven@moss.net;
hharris@coral-energy.com;	svongdeuane@semprasolutions.com;
hoerner@redefiningprogress.org;	svs6@pge.com;
janill.richards@doj.ca.gov;	tam@cpuc.ca.gov;
jchamberlin@sel.com;	tcx@cpuc.ca.gov;
jci@cpuc.ca.gov;	tdarton@pilotpowergroup.com;
jeffgray@dw.com;	tim.hemig@nrgenergy.com;
jen@cnt.org;	todil@mckennalong.com;
jesus.arredondo@nrgenergy.com;	troberts@sempa.com;
jf2@cpuc.ca.gov;	vjw3@pge.com;
jgalloway@ucsusa.org;	ygross@sempraglobal.com;

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document, which is current as of today's date, is attached.

Dated June 1, 2006, at San Francisco, California

/s/ JOYCE TOM

Joyce Tom

***** SERVICE LIST *****

Last Update on 31-MAY-2006 by: DYK
R0604009 LIST

***** APPEARANCES *****

Janill Richards
Deputy Attorney General
CALIFORNIA ATTORNEY GENERAL'S OFFICE
1515 CLAY STREET, 20TH FLOOR
OAKLAND CA 94702
(510) 622-2130
janill.richards@doj.ca.gov
For: People of the State of California

Avis Kowalewski
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON CA 94588
(925) 479-6640
kowalewskia@calpine.com

Greggory L. Wheatland
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95814
(916) 447-2166
glw@eslawfirm.com
For: LS Power, Inc.

Ian Carter
Policy Coordinator-North America
INTERNATIONAL EMISSIONS TRADING ASSN.
350 SPARKS STREET, STE. 809
OTTAWA ON K1R 7S8
CANADA
(613) 594-3912
carter@ieta.org
For: International Emissions Trading Association

Diana L. Lee
Legal Division
RM. 4300
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-4342
dil@cpuc.ca.gov

Barry F. Mccarthy
Attorney At Law
MCCARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE CA 95113
(408) 288-2080
bmcc@mccarthylaw.com
For: Northern California Generation Coalition

Christopher J. Warner
PACIFIC GAS AND ELECTRIC COMPANY
77 BEALE STREET
SAN FRANCISCO CA 94105
(415) 973-6695
cjlw5@pge.com
For: Pacific Gas and Electric

J. Andrew Hoerner
REDEFINING PROGRESS
1904 FRANKLIN STREET
OAKLAND CA 94612
(510) 507-4820
hoerner@redefiningprogress.org

Theodore Roberts
Attorney At Law
SEMPRA GLOBAL
101 ASH STREET, HQ 13D
SAN DIEGO CA 92101-3017
(619) 699-5111
troberts@sempra.com
For: Sempra Global/Sempra Energy Solutions

Annette Gilliam
Attorney At Law
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVENUE
ROSEMEAD CA 91770
(626) 302-4880
gilliaa@sce.com
For: Southern California Edison

Andrea Weller
STRATEGIC ENERGY
3130 D BALFOUR RD., SUITE 290
BRENTWOOD CA 94513
(916) 759-7052
aweller@sel.com
For: Strategic Energy

Jennifer Chamberlin
STRATEGIC ENERGY, LLC
2633 WELLINGTON COURT
CLYDE CA 94520
(925) 969-1031
jchamberlin@sel.com
For: Strategic Energy

Keith R. Mccrea
Attorney At Law
SUTHERLAND, ASBILL & BRENNAN, LLP
1275 PENNSYLVANIA AVE., N.W. STE. 800
WASHINGTON DC 20004-2415
(202) 383-0705
keith.mccrea@sablaw.com
For: California Manufacturers & Technology Assn.

***** SERVICE LIST *****

Last Update on 31-MAY-2006 by: DYK
R0604009 LIST

***** STATE EMPLOYEE *****

Karen Griffin
Executive Office
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET, MS 39
SACRAMENTO CA 95814
(916) 654-4833
kgriffin@energy.state.ca.us

Lisa Decarlo
Staff Counsel
CALIFORNIA ENERGY COMMISSION
1516 9TH STREET MS-14
SACRAMENTO CA 95814
(916) 654-5195
ldecarlo@energy.state.ca.us

Pierre H. Duvair
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET, MS-41
SACRAMENTO CA 95814
(916) 653-8685
pduvair@energy.state.ca.us

Theresa Cho
Executive Division
RM. 5207
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-2682
tcx@cpuc.ca.gov

Julie A. Fitch
Executive Division
RM. 5203
505 VAN NESS AVE
San Francisco CA 94102
(415) 355-5552
jf2@cpuc.ca.gov

Meg Gottstein
Administrative Law Judge
PO BOX 210/21496 NATIONAL STREET
VOLCANO CA 95689
(209) 296-4979
meg@cpuc.ca.gov

Meg Gottstein
Administrative Law Judge Division
RM. 2106
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-4802
meg@cpuc.ca.gov

Judith Ikle
Energy Division
RM. 4012
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1486
jci@cpuc.ca.gov
For: Energy Resources Branch

James Loewen
ENERGY DIVISION
320 WEST FOURTH STREET
LOS ANGELES CA 90013
(213) 620-6341
loe@cpuc.ca.gov

Jonathan Lakritz
Administrative Law Judge Division
RM. 5020
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-5235
jol@cpuc.ca.gov

Lainie Motamedi
Division of Strategic Planning
RM. 5119
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1764
lrm@cpuc.ca.gov

Bill Lockyer
KEN/ALEX
State Attorney General
STATE OF CALIFORNIA, DEPT OF JUSTICE
PO BOX 944255
SACRAMENTO CA 94244-2550
(916) 445-9555
ken.alex@doj.ca.gov

Don Schultz
Division of Ratepayer Advocates
RM. SCTO
770 L STREET, SUITE 1050
Sacramento CA 95814
(916) 327-2409
dks@cpuc.ca.gov

Donald R. Smith
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1562
dsh@cpuc.ca.gov

***** SERVICE LIST *****

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R0604009 LIST

Merideth Sterkel
Energy Division
AREA 4-A
505 VAN NESS AVE
San Francisco CA 94102
(415) 703-1873
mts@cpuc.ca.gov

Christine S. Tam
Division of Ratepayer Advocates
RM. 4209
505 VAN NESS AVE
San Francisco CA 94102
(415) 355-5556
tam@cpuc.ca.gov

***** INFORMATION ONLY *****

Michael Mazur
3 PHASES ELECTRICAL CONSULTING
2100 SEPULVEDA BLVD., SUITE 15
MANHATTAN BEACH CA 90266
(310) 798-5275
mmazur@3phases.com

Marc D. Joseph
ADAMS BRADWELL JOSEPH & CARDOZO
601 GATEWAY BLVD. STE 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
mdjoseph@adamsbroadwell.com
For: California Unions for Reliable Energy & Coalition of
California Utility Employees

Gloria D. Smith
ADAMS, BROADWELL, JOSEPH & CARDOZO
601 GATEWAY BLVD., SUITE 1000
SOUTH SAN FRANCISCO CA 94080
(650) 589-1660
gsmith@adamsbroadwell.com

Karen Terranova
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, STE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
filings@a-klaw.com

Annie Stange
ALCANTAR & KAHL
1300 SW FIFTH AVE., SUITE 1750
PORTLAND OR 97210
(503) 402-8702
sas@a-klaw.com

Donald Brookhyser
Attorney At Law
ALCANTAR & KAHL
120 MONTGOMERY STREET
SAN FRANCISCO CA 94104
(415) 421-4143
deb@a-klaw.com
For: Cogeneration Association of California

Evelyn Kahl
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
ek@a-klaw.com
For: Energy Producers & Users Coalition

Michael P. Alcantar
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
mpa@a-klaw.com
For: Cogeneration Association of California

Seema Srinivasan
Attorney At Law
ALCANTAR & KAHL, LLP
120 MONTGOMERY STREET, SUITE 2200
SAN FRANCISCO CA 94104
(415) 421-4143
sls@a-klaw.com
For: Energy Producers & Users Coalition

Paul Delaney
AMERICAN UTILITY NETWORK (A.U.N.)
10705 DEER CANYON DRIVE
ALTA LOMA CA 91737
pssed@adelphia.net

Edward G Poole
ANDERSON DONOVAN & POOLE
601 CALIFORNIA STREET SUITE 1300
SAN FRANCISCO CA 94108
(415) 956-6413
epoole@adplaw.com
For: San Francisco Community Power

Greg Blue
140 MOUNTAIN PKWY.
CLAYTON CA 94517
(925) 323-3612
greg.blue@sbcglobal.net

***** SERVICE LIST *****

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R0604009 LIST

Larry Barrett
Barrett Consulting Services
AOL
PO BOX 60429
COLORADO SPRINGS CO 80960
lbbarrett@adelphia.net

John Laun
APOGEE INTERACTIVE, INC.
1220 ROSECRANS ST., SUITE 308
SAN DIEGO CA 92106
(619) 840-4804
jlaun@apogee.net

Don Stonberger
APS ENERGY SERVICES COMPANY, INC.
400 E. VAN BUREN STREET, SUITE 750
PHOENIX AZ 85004
don.stonberger@apses.com

Kelly Potter
APS ENERGY SERVICES COMPANY, INC.
400 E. VAN BUREN STREET, SUITE 750
PHOENIX AZ 85260
(602) 744-5002
kelly.potter@apses.com

Curt Barry
717 K STREET, SUITE 503
SACRAMENTO CA 95814
(916) 449-6171
curt.barry@iwpnews.com

Reed V. Schmidt
Vice President
BARTLE WELLS ASSOCIATES
1889 ALCATRAZ AVENUE
BERKELEY CA 94703
(510) 653-3399
rschmidt@bartlewells.com
For: California City-County Street Light Association

Ryan Wiser
BERKELEY LAB
MS-90-4000
ONE CYCLOTRON ROAD
BERKELEY CA 94720
(510) 486-5474
rhwiser@lbl.gov

Kevin Boudreaux
CALPINE POWER AMERICA-CA, LLC
717 TEXAS AVENUE, SUITE 1000

David Branchcomb
BRANCHCOMB ASSOCIATES, LLC
9360 OAKTREE LANE
ORANGEVILLE CA 95662
(916) 988-5676
david@branchcomb.com

Bruce McLaughlin
BRAUN & BLAISING, P.C.
915 L STREET, SUITE 1420
SACRAMENTO CA 95814
(916) 326-5812
mclaughlin@braunlegal.com

Dallas Burtraw
1616 P STREET, NW
WASHINGTON DC 20036
(202) 328-5087
burtraw@rff.org

Dan Adler
Director, Tech And Policy Development
CALIFORNIA CLEAN ENERGY FUND
582 MARKET ST., SUITE 1015
SAN FRANCISCO CA 94104
(415) 986-4590
Dan.adler@calcef.org

Chris Raphael
CALIFORNIA ENERGY MARKETS
517-B POTRERO AVENUE
SAN FRANCISCO CA 94113
(510) 932-8029
chris@newsdata.com

Karen Norene Mills
Attorney At Law
CALIFORNIA FARM BUREAU FEDERATION
2300 RIVER PLAZA DRIVE
SACRAMENTO CA 95833
(916) 561-5655
kmills@cbbf.com

Steven S. Schleimer
CALPINE CORPORATION
3875 HOPYARD ROAD, SUITE 345
PLEASANTON CA 94588
(925) 479-6808
sschleimer@calpine.com

***** SERVICE LIST *****

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R0604009 LIST

HOUSTON TX 77002
kevin.boudreaux@calpine.com

Jen McGraw
CENTER FOR NEIGHBORHOOD TECHNOLOGY
PO BOX 14322
SAN FRANCISCO CA 94114
(415) 644-0877
jen@cnt.org

George Hanson
Assistant General Manager
CITY OF CORONA
730 CORPORATION YARD WAY
CORONA CA 92880
(951) 739-4967
george.hanson@ci.corona.ca.us

Lynelle Lund
COMMERCE ENERGY, INC.
600 ANTON BLVD., SUITE 2000
COSTA MESA CA 92626
(714) 259-2536
llund@commerceenergy.com

Gregory Koiser
CONSTELLATION NEW ENERGY, INC.
350 SOUTH GRAND AVENUE, SUITE 3800
LOS ANGELES CA 90071
gregory.koiser@constellation.com

Clyde Murley
CONSULTANT
600 SAN CARLOS AVENUE
ALBANY CA 94706
(510) 528-8953
clyde.murley@comcast.net

Hank Harris
CORAL POWER, LLC
4445 EASTGATE MALL, SUITE 100
SAN DIEGO CA 92121
(858) 320-1505
hharris@coral-energy.com

Jeffrey P. Gray
DAVIS WRIGHT TREMAINE, LLP
ONE EMBARCADERO CENTER, SUITE 600
SAN FRANCISCO CA 94111
(415) 276-6500
jeffgray@dwt.com

Carolyn M. Kehrein
ENERGY MANAGEMENT SERVICES
1505 DUNLAP COURT
DIXON CA 95620-4208

Norman J. Furuta
Attorney At Law
DEPARTMENT OF THE NAVY
2001 JUNIPERO SERRA BLVD., SUITE 600
DALY CITY CA 94014-3890
(650) 746-7312
norman.furuta@navy.mil

Daniel W. Douglass
DOUGLASS & LIDDELL
21700 OXNARD STREET, SUITE 1030
WOODLAND HILLS CA 91367-8102
(818) 961-3001
douglass@energyattorney.com

Donald C. Liddell, P.C.
DOUGLASS & LIDDELL
2928 2ND AVENUE
SAN DIEGO CA 92103
(619) 993-9096
liddell@energyattorney.com

Mahlon Aldridge
ECOLOGY ACTION
PO BOX 1188
SANTA CRUZ CA 95060
(831) 426-5925 116
emahlon@ecoact.org

Andrew Brown
Attorney At Law
ELLISON, SCHNEIDER & HARRIS, LLP
2015 H STREET
SACRAMENTO CA 95814
(916) 447-2166
abb@eslawfirm.com

Adrian Pye
ENERGY AMERICA, LLC
ONE STAMFORD PLAZA, EIGHTH FLOOR
263 TRESSER BLVD.
STAMFORD CT 06901
(416) 590-3290
adrian.pye@na.centrica.com

Cynthia Mitchell
ENERGY ECONOMICS, INC.
530 COLGATE COURT
RENO NV 89503
(775) 324-5300
ckmitchell1@sbcglobal.net

***** SERVICE LIST *****

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R0604009 LIST

(707) 678-9506
cmkehrein@ems-ca.com

Kevin J. Simonsen
ENERGY MANAGEMENT SERVICES
646 EAST THIRD AVENUE
DURANGO CO 81301
(970) 259-1748
kjsimonsen@ems-ca.com

Michel Florio
Attorneys At Law
711 VAN NESS AVE., STE. 350
SAN FRANCISCO CA 94102
(415) 929-8876
mflorio@turn.org

Janine L. Scancarelli
FOLGER LEVIN & KAHN LLP
275 BATTERY STREET, 23RD FLOOR
SAN FRANCISCO CA 94111
(415) 986-2800
jscancarelli@flk.com

Curtis L. Kebler
GOLDMAN, SACHS & CO.
2121 AVENUE OF THE STARS
LOS ANGELES CA 90067
(310) 407-5619
curtis.kebler@gs.com

Joseph F. Wiedman
Attorney At Law
GOODIN MACBRIDE SQUERI RITCHIE & DAY,LLP
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
jwiedman@gmssr.com

Brian T. Cragg
Attorney At Law
GOODIN, MACBRIDE, SQUERI, RITCHIE & DAY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
bcragg@gmssr.com

Diane I. Fellman
Attorney At Law
LAW OFFICES OF DIANE I. FELLMAN
234 VAN NESS AVENUE
SAN FRANCISCO CA 94102
(415) 703-6000
diane_fellman@fpl.com

James D. Squeri
Attorney At Law
GOODIN, MACBRIDE, SQUERI, RITCHIE & DAY
505 SANSOME STREET, SUITE 900
SAN FRANCISCO CA 94111
(415) 392-7900
jsqueri@gmssr.com

Gregg Morris
GREEN POWER INSTITUTE
2039 SHATTUCK AVENUE, STE 402
BERKELEY CA 94704
(510) 644-2700
gmorris@emf.net

Arno Harris
PO BOX 6903
SAN RAFAEL CA 94903
(415) 298-7096
arno@arnoharris.com

Denise Hill
Director
4004 KRUSE WAY PLACE, SUITE 150
LAKE OSWEGO OR 97035
(503) 675-3816
Denise_Hill@transalta.com
For: Market Access & Trade Policy Transalta Energy Marketing
(US) Inc.

Steven Kelly
INDEPENDENT ENERGY PRODUCERS ASSN
1215 K STREET, SUITE 900
SACRAMENTO CA 95814-3947
(916) 448-9499
steven@iepa.com

Carol Jolly
PO BOX 585
CHESTERFIELD MA 01012
(413) 296-4254
cajollyco@verizon.net

Edward J. Tiedemann
Attorney At Law
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
400 CAPITOL MALL, 27TH FLOOR
SACRAMENTO CA 95814-4416
(916) 321-4500
etiedemann@kmtg.com
For: Placer County Water Agency & Kings River Conservation
District

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R0604009 LIST

Edward Vine
LAWRENCE BERKELEY NATIONAL LABORATORY
BUILDING 90-4000
BERKELEY CA 94720
(510) 486-6047
elvine@lbl.gov

Karen Lindh
LINDH & ASSOCIATES
7909 WALERGA ROAD, NO. 112, PMB119
ANTELOPE CA 95843
(916) 729-1562
karen@klindh.com

Audra Hartmann
LS POWER GENERATION
980 NINTH STREET, SUITE 1420
SACRAMENTO CA 95814
(916) 441-6242
ahartmann@lspower.com

John W. Leslie
Attorney At Law
LUCE, FORWARD, HAMILTON & SCRIPPS, LLP
11988 EL CAMINO REAL, SUITE 200
SAN DIEGO CA 92130
(858) 720-6352
jleslie@luce.com

Richard Mccann, Ph.D
M. CUBED
2655 PORTAGE BAY, SUITE 3
DAVIS CA 95616
(530) 757-6363
rmccann@umich.com

C. Susie Berlin
Attorney At Law
MC CARTHY & BERLIN, LLP
100 PARK CENTER PLAZA, SUITE 501
SAN JOSE CA 95113
(408) 288-2080
sberlin@mccarthyllaw.com

Sara Steck Myers
Attorney At Law
122 28TH AVENUE
SAN FRANCISCO CA 94121
(415) 387-1904
ssmyers@att.net
For: Center for Energy Efficiency and Renewable Technologies

Ann G. Grimaldi
MCKENNA LONG & ALDRIDGE LLP
101 CALIFORNIA STREET, 41ST FLOOR
SAN FRANCISCO CA 94111
(415) 267-4000
agrimaldi@mckennalong.com
For: Center for Energy and Economic Development

Paul M. Seby
TIMOTHY R. ODIL
MCKENNA LONG & ALDRIDGE LLP
1875 LAWRENCE STREET, SUITE 200
DENVER CO 80202
(303) 634-4000
pseby@mckennalong.com
For: Center for Energy and Economic Development

Timothy R. Odil
MCKENNA LONG & ALDRIDGE LLP
1875 LAWRENCE STREET, SUITE 200
DENVER CO 80202
(303) 634-4000
todil@mckennalong.com
For: Center for Energy and Economic Development

Christopher J. Mayer
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 526-7430
chrism@mid.org

Joy A. Warren
Attorney At Law
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95354
(209) 526-7389
joyw@mid.org

Richard Smith
MODESTO IRRIGATION DISTRICT
1231 11TH STREET
MODESTO CA 95352-4060
(209) 526-7463
richards@mid.org

MRW & ASSOCIATES, INC.
1999 HARRISON STREET, SUITE 1440
OAKLAND CA 94612

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R0604009 LIST

(510) 834-1999

mrw@mrwassoc.com

Audrey Chang
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
achang@nrdc.org

Devra Wang
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
dwang@nrdc.org

Sheryl Carter
NATURAL RESOURCES DEFENSE COUNCIL
111 SUTTER STREET, 20TH FLOOR
SAN FRANCISCO CA 94104
(415) 875-6100
scarter@nrdc.org

Frank Luchetti
NEVADA DIV. OF ENVIRONMENTAL PROTECTION
901 S. STEWART ST., SUITE 4001
CARSON CITY NV 89701
(775) 687-9345
fluchetti@ndep.nv.gov

Scott Tomashefsky
NORTHERN CALIFORNIA POWER AGENCY
180 CIRBY WAY
ROSEVILLE CA 95678-6420
(916) 781-4291
scott.tomashefsky@ncpa.com

Tim Hemig
Director
NRG ENERGY
4600 CARLSBAD BLVD.
CARLSBAD CA 99208
(760) 268-4069
tim.hemig@nrgenergy.com

Soumya Sastry
PACIFIC GAS AND ELECTRIC COMPANY
MAIL CODE B9A
PO BOX 770000
SAN FRANCISCO CA 94177
(415) 973-3295
svs6@pge.com

Jesus Arredondo
NRG ENERGY INC.
4600 CARLSBAD BLVD.
CARLSBAD CA 99208
(916) 275-7493
jesus.arredondo@nrgenergy.com

E.J. Wright
OCCIDENTAL POWER SERVICES, INC.
5 GREENWAY PLAZA, SUITE 110
HOUSTON TX 77046
(562) 624-3309
ej_wright@oxy.com

Sam Sadler
OREGON DEPARTMENT OF ENERGY
625 NE MARION STREET
SALEM OR 97301-3737
(503) 373-1034
samuel.r.sadler@state.or.us

Brian K. Cherry
Regulatory Relations
PACIFIC GAS AND ELECTRIC COMPANY
MAIL CODE B10C
PO BOX 770000
SAN FRANCISCO CA 94177-0001
bkc7@pge.com

Ed Lucha
Project Coordinator
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, MAIL CODE: B9A
SAN FRANCISCO CA 94177
(415) 973-3872
ell5@pge.com

Grace Livingston-Nunley
Assistant Project Manager
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000 MAIL CODE B9A
SAN FRANCISCO CA 94177
(415) 973-4304
gxl2@pge.com

Sebastien Csapo
Project Manager
PACIFIC GAS AND ELECTRIC COMPANY
MAIL CODE B9A
PO BOX 770000

***** SERVICE LIST *****

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R0604009 LIST

Valerie J. Winn
PACIFIC GAS AND ELECTRIC COMPANY
PO BOX 770000, B9A
SAN FRANCISCO CA 94177-0001
(415) 973-3839
vjw3@pge.com

Shay Labray
Manager, Regulatory
PACIFICORP
825 NE MULTNOMAH, SUITE 300
PORTLAND OR 97232
(503) 813-6176
shayleach.labray@pacificorp.com

Jasmin Ansar
PG&E
MAIL CODE B24A
PO BOX 770000
SAN FRANCISCO CA 94177
jxa2@pge.com

Jonathan Forrester
PG&E
MAIL CODE N13C
PO BOX 770000
SAN FRANCISCO CA 94177
JDF1@PGE.COM

Thomas Darton
PILOT POWER GROUP, INC.
9320 CHESAPEAKE DRIVE, SUITE 112
SAN DIEGO CA 92123
(858) 627-9577
tdarton@pilotpowergroup.com

Lisa Weinzimer
California Energy Reporter
PLATTS
695 NINTH AVENUE, NO. 2
SAN FRANCISCO CA 94118
(415) 387-1025
lisa_weinzimer@platts.com

Aimee M. Smith
Attorney At Law
SEMPRA ENERGY
101 ASH STREET HQ13
SAN DIEGO CA 92101
(619) 699-5042
amsmith@sempra.com

Yvonne Gross
Regulatory Policy Manager
SEMPRA ENERGY
HQ08C

SAN FRANCISCO CA 94177
sscb@pge.com

Karen Mcdonald
POWEREX CORPORATION
1400,
666 BURRAND STREET
VANCOUVER BC V6C 2X8
CANADA
(604) 895-7030
karen.mcdonald@powerex.com

Rick C. Noger
PRAXAIR PLAINFIELD, INC.
2711 CENTERVILLE ROAD, SUITE 400
WILMINGTON DE 19808
(925) 866-6809
rick_noger@praxair.com

Harvey Eder
PUBLIC SOLAR POWER COALITION
1218 12TH ST., 25
SANTA MONICA CA 90401
(310) 393-2589
harveyederpspc.org@hotmail.com

Richard Cowart
REGULATORY ASSISTANCE PROJECT
50 STATE STREET, SUITE 3
MONTPELIER VT 05602
(802) 223-8199
rapcowart@aol.com

Ellen Wolfe
RESERO CONSULTING
9289 SHADOW BROOK PL.
GRANITE BAY CA 95746
(916) 781-4533
ewolfe@resero.com

Clark Bernier
RLW ANALYTICS
1055 BROADWAY, SUITE G
SONOMA CA 95476
(707) 939-8823 X 19
clark.bernier@rlw.com

Steve Rahon
SAN DIEGO GAS & ELECTRIC COMPANY
8330 CENTURY PARK COURT, CP32C
SAN DIEGO CA 92123-1548

***** SERVICE LIST *****

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R0604009 LIST

101 ASH STREET
SAN DIEGO CA 92103
(619) 696-2075
ygross@sempraglobal.com

Steven Moss
SAN FRANCISCO COMMUNITY POWER COOP
2325 3RD STREET, SUITE 344
SAN FRANCISCO CA 94120
(415) 643-9578
steven@moss.net

Symone Vongdeuane
SEMPRA ENERGY SOLUTIONS
101 ASH STREET, HQ09
SAN DIEGO CA 92101-3017
(619) 696-4996
svongdeuane@semprasolutions.com

Rasha Prince
SOUTHERN CALIFORNIA GAS COMPANY
555 WEST 5TH STREET, GT 14D6
LOS ANGELES CA 90013
(213) 244-5141
rprince@semprautilities.com

Linda Wrazen
SEMPRA GLOBAL
101 ASH STREET, HQ 08
SAN DIEGO CA 92101
(619) 696-4411
lwrazen@sempraglobal.com

Hayley Goodson
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
hayley@turn.org

Akbar Jazayehi
SOUTHERN CALIFORNIA EDISON COMPANY
PO BOX 800
2244 WALNUT GROVE AVE. ROOM 390
ROSEMEAD CA 91770

Marcel Hawiger
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
marcel@turn.org

Case Administration
SOUTHERN CALIFORNIA EDISON COMPANY
2244 WALNUT GROVE AVE., RM. 370
ROSEMEAD CA 91770
(626) 302-4875
case.admin@sce.com

Matthew Freedman
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVENUE, SUITE 350
SAN FRANCISCO CA 94102
(415) 929-8876
freedman@turn.org

Lad Lorenz
V.P. Regulatory Affairs
SOUTHERN CALIFORNIA GAS COMPANY
601 VAN NEW AVENUE, SUITE 2060
SAN FRANCISCO CA 94102

Nina Suetake
Attorney At Law
THE UTILITY REFORM NETWORK
711 VAN NESS AVE., STE 350
SAN FRANCISCO CA 94102
(415) 929-8876
nsuetake@turn.org

Andrew J. Van Horn
VAN HORN CONSULTING
12 LIND COURT
ORINDA CA 94563
(925) 254-3358
andy.vanhorn@vhcenergy.com

Roger Pelote
THE WILLIAMS COMPANY, INC.
12736 CALIFA STREET
VALLEY VILLAGE CA 91607
(818) 761-5954
roger.pelote@williams.com

Alan Comnes
WEST COAST POWER
3934 SE ASH STREET
PORTLAND OR 97214
(503) 239-6913
alan.comnes@nrgenergy.com

John Galloway
Senior Energy Analyst
UNION OF CONCERNED SCIENTISTS

Eric Guidry

******* SERVICE LIST *******

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R0604009 LIST

JOHN NIELSEN
WESTERN RESOURCE ADVOCATES
2260 BASELINE ROAD, SUITE 200
BOULDER CO 80304
(303) 444-1188
eguidry@westernresources.org

2397 SHATTUCK AVENUE, SUITE 203
BERKELEY CA 94704
(510) 843-1872
jgalloway@ucsusa.org